SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
SUBCOMMITTEE ON SURFACE TRANSPORTATION AND MERCHANT MARINE

TESTIMONY OF LINDA J. MORGAN
CHAIRMAN, SURFACE TRANSPORTATION BOARD

ON REAUTHORIZATION

March 2, 1999

My name is Linda J. Morgan, Chairman of the Surface Transportation Board (Board). I am appearing at the request of the Subcommittee to discuss the Board's reauthorization. I presented written and oral testimony before this Subcommittee in connection with the Board's reauthorization hearings last year. For easy reference, I have appended as Attachment 1 the written testimony (without attachments) that I submitted last year, and I will not repeat all the background on the Board's responsibilities that was included in that submission.

This hearing is likely to focus on how the Board has implemented its existing authority, and on whether the statute under which the Board operates ought to be amended. During my oral testimony last year, several questions were raised about the extent to which the Board has used its existing authority to address a variety of issues of concern to certain Members of the Committee. As my testimony will demonstrate, the Board has used its existing authority to the fullest extent appropriate, and has addressed in one way or another every one of the issues that were raised during the hearing last year.

Background on the Board

As you know, on January 1, 1996, the Board was established pursuant to P.L. 104-88, the ICC Termination Act of 1995 (ICCTA). Consistent with the trend at that time toward less economic regulation of the surface transportation industry, the ICCTA eliminated the ICC and, with it, certain regulatory functions that it had administered. The ICCTA transferred to the Board core rail adjudicative functions and certain non-rail adjudicative functions previously performed by

the ICC. Motor carrier licensing and certain other motor functions were transferred to the Federal Highway Administration within the Department of Transportation (DOT). The resources made available to the Board were reduced by well over one-half from those at the ICC at the time of its termination.

The Board is a three-member, bipartisan, decisionally independent adjudicatory body organizationally housed within DOT. The rail oversight conducted by the Board encompasses maximum rate reasonableness, car service and interchange, mergers and line acquisitions, line constructions and abandonments, and labor protection. The important rail reforms of the Staggers Rail Act of 1980 (Staggers Act) are continued under the ICCTA. The jurisdiction of the Board also includes certain oversight of the intercity bus industry and pipeline carriers; rate regulation involving non-contiguous domestic water transportation, household goods carriers, and collectively determined motor rates; and the disposition of motor carrier undercharge claims. The ICCTA empowers the Board, through its exemption authority, to promote deregulation administratively.

Reauthorization of the Board

Overview. The Board was authorized under the ICCTA through September 30, 1998; as it was not reauthorized by Congress last year, it is currently funded but operating without reauthorization. On January 19, 1999, Chairman McCain introduced S. 98, which was originally cosponsored by Senators Hollings and Lott, who have since been joined as cosponsors by Senators Stevens, Inouye, Hagel, Frist, Snowe, Sarbanes, Campbell, Bunning, Thurmond, and Breaux. S. 98 would extend the Board's authorization through fiscal year (FY) 2002. I support S. 98.

Congress created the Board as an independent adjudicative body. There continues to be an important regulatory role for such a body with respect to surface transportation; the need for such a body is no less today than it was when the Board was established. The resources allocated to the Board should reflect the fact that the Board's responsibilities continue at the level they were

when the Board was created. Given the critical nature of the responsibilities being implemented by the Board relative to an ever-changing transportation marketplace, the certainty and stability associated with continuing these functions in the same forum are paramount, and a multi-year reauthorization period is important to that end.

FY 2000 Budget Request and Outyear Authorization Numbers. Earlier this year, the Board submitted a budget request for FY 2000 of $17.0 million and 140 FTEs, essentially adjusting the FY 1999 level for inflation and pay raises. This request reflects the relatively constant workload that is expected and the statutory and regulatory deadlines associated with the resolution of the cases filed. Attached to my testimony is the Board's FY 2000 budget submission (Attachment 2).

With regard to outyear funding, S. 98 includes authorization figures for a 3-year period. They assure outyear amounts at the FY 2000 staffing and funding level, as follows: (1) $17,000,000 for FY 2000; (2) $17,555,000 for FY 2001; and (3) $18,129,000 for FY 2002.

In connection with future Board resource needs, I should note two concerns. First, the Board must have a way of ensuring that it can hire new employees in sufficient time to be prepared to replace the many experienced employees that will be retiring in the next few years. Second, the Board must have the resources necessary to accommodate any legislative changes that Congress might approve.

User Fees. Currently, the Board is funded through a combination of appropriations and offsetting collections. A debate continues over whether the Board ought to be fully funded through user fees, and the Administration has included such a proposal in its FY 2000 budget. Such an approach would require additional legislative authority. We addressed this entire issue in some detail in our written statement last year, and I will not elaborate on it again here. As we indicated in that statement, the Board continues to believe that it must be adequately funded to carry out its mandate, and my position has been and continues to be that a financing mechanism of appropriations and offsetting collections is the appropriate way to proceed until Congress provides new direction.

Workload of the Board

In our written testimony last year, we provided detailed information about the Board's caseload, and the Board's accomplishments in meeting its continued responsibilities. The caseload and case complexity have remained relatively constant, and the Board's record of accomplishments remains impressive. In this regard, attached to my testimony (Attachment 3) is a copy of "Highlights -- Surface Transportation Board."

Summary of Board Actions on Relevant Issues

Some have sought to tie the Board's reauthorization to the passage of legislation modifying the Board's enabling statutes. Although I do not agree that the Board's reauthorization ought to be held hostage to the substantive legislative debate, I will briefly review the Board's most important actions in each of the areas that I believe legislative debate may address.

The Rail Access and Competition Hearings. My testimony last year discussed the hearings that the Board had scheduled at the direction of Chairman McCain and Subcommittee Chairman Hutchison to further address issues related to access and competition in today's railroad industry. Those hearings were held a few days after my testimony before the Subcommittee last year. At those hearings, rail-dependent shippers expressed their concerns about inadequate regulatory access, poor service, and the lack of competition. The Board, in a balanced response that mixed appropriate governmental action with important private-sector efforts, initiated and completed several follow-up actions. In a letter (Attachment 4) dated December 21, 1998, to Chairman McCain and Chairman Hutchison, I reported on: (1) Board proceedings that emanated from the access and competition hearings; (2) private-sector initiatives undertaken as a result of the hearings; and (3) ways in which the issues that are still outstanding might be addressed, should Congress choose to take legislative action in those areas. The following is a summary of those items.

1. **Board Proceedings**. In my testimony last year, I discussed "market dominance" ― the finding that a particular service is not subject to effective competition, which the Board must make before it can adjudicate a particular rate reasonableness complaint ― which has been viewed as an unnecessary procedural barrier to obtaining meaningful access to the regulatory system for the review of rail rate reasonableness complaints. I also discussed rail service in general and, in particular, the rail service emergency in the western United States, which several Members addressed last year, and which was also addressed at length during the rail access and competition hearings.

As to each issue, market dominance and service, using existing authority, the Board took

decisive and aggressive action in response to the concerns raised. It completed its rulemaking proceeding addressing market dominance by repealing, for both large and small cases, the rules allowing railroads to show "product and geographic" competition, that is, competition from other products or from services to or from other locations. The Association of American Railroads (AAR) has sought Board reconsideration of this decision. In another proceeding, the Board issued rules giving shippers and smaller railroads opportunities to obtain service from alternate carriers during periods of inadequate service, using either the "emergency service" or the " competitive access" provisions of the law. The AAR has appealed this decision in court. A copy of the Board's press release describing these decisions is attached (Attachment 5).

2. **Private-Sector Discussions**. The Board has often expressed the view that common sense government involves a mix of effective governmental action and appropriate private-sector initiative. During the rail access and competition hearings, the Board directed the private parties to search for private-sector solutions in several areas related to the concerns raised at the Board's access and competition hearings about competition, service, and dispute resolution. My December 21 letter reported on the outcome of these private-sector discussions, which resulted in important and unprecedented progress on a number of fronts.

In particular, the letter summarized the comprehensive agreement into which large and small railroads entered to provide a framework for improving the ability of smaller railroads to provide competitive service and of smaller railroads and larger railroads to work together to fulfill their shared goal of serving the shipping public in the most efficient manner possible (copy of the Board's press release describing the agreement attached as Attachment 6). The letter also cited an agreement reached by the railroad industry and the National Grain and Feed Association (NGFA) on a mandatory arbitration program to resolve certain disputes (copy of NGFA press release attached as Attachment 7). It discussed the initial five formal "outreach" meetings (expected to be followed by additional such meetings in the future) that the railroad industry held throughout the Nation with a variety of rail shippers and shipper groups, all of which I attended, to discuss matters of mutual concern, in particular related to service (AAR's letter summarizing

these meetings attached as Attachment 8). As a result of these meetings, all of the larger railroads for the first time are making available certain system-wide performance data on a weekly basis. Finally, the December 21 letter alluded to the private-sector discussions concerning railroad " revenue adequacy" and the Board's competitive access rules in general, which did not produce general agreement between railroads and shippers. And reflecting the spirit behind the Board's encouragement of private-sector efforts, the Board and the U.S. Department of Agriculture, to further assist shipper/railroad dialogue and planning, have entered into a cooperative effort under the auspices of a Grain Logistics Task Force to provide important information on grain supply and demand and corresponding transportation needs and capacity availability.

3. **Possible Resolutions of Outstanding Issues**. In my December 21 letter, I identified possible ways in which Congress might pursue legislative resolutions to important issues that are still outstanding, if it wished to do so. For example, the letter suggested that Congress might consider legislatively abolishing the requirement that the Board determine on a regular basis which railroads are revenue adequate. It suggested that future procedures for determining railroad revenue needs could be recommended by an expert private-sector panel. The letter also stated that, if Congress wanted to simplify even further the Board's small rate case guidelines, which apply in cases in which the standard, more complex procedures cannot be practicably used, it could legislate specific small rate case standards providing, for example, that, for certain types of cases, all rates above a specified revenue-to-variable cost ratio would be considered unreasonable. It suggested that any such approach could balance the need of smaller shippers to be able to have meaningful regulatory access for relief from unreasonably high rates with railroad system-wide revenue needs.

Employee Issues. Under the law, the Board becomes involved in rail labor issues in connection with its approval of various types of rail transactions. The Board has worked to provide railroad workers not only with the protections mandated by law, but also with the necessary time and information to permit workers and their representatives to negotiate with the carriers in implementing Board-approved transactions and to make informed decisions regarding

their employment. I will list some of the actions the Board has taken in this regard.

1. **Class II and Class III Transactions**. The Board has issued two important decisions protecting employee rights in transactions involving smaller railroads. First, it adopted a set of standards applicable to employees affected by Class II transactions and eligible for statutorily provided labor protection for those transactions. In approving the Class II standards, the Board adopted a more expansive definition of "affected employee" and established certain other procedural protections. On appeal, the court reversed the Board in part, finding that the Board had interpreted the statute too generously in favor of employees. The Board also approved a 60-day notice period for workers affected by line sales to Class II and Class III carriers and to noncarriers whose revenues would exceed $5 million a year following the transaction. Under the 60-day rule, workers and union offices would receive information that sets forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the lines to be transferred, no fewer than 60 days before the earliest date the transaction could be consummated. This decision was upheld in its entirety in court.

2. **Class I Mergers**. In railroad merger proceedings, the Board has provided employee protective conditions required by law, which are largely self-executing and which provide for up to 6 years of pay protection and other benefits. The Board is involved in ensuring that the protections are not undercut or abrogated, but is otherwise only involved on an extremely limited review basis, and then only after negotiations between employee representatives and railroad management have not produced an agreement and an arbitrator has been called on for assistance, the arbitrator has rendered an opinion, and some party to the arbitration has sought Board review of the arbitral award.

As the Supreme Court has held, the law does provide for the override of collective bargaining agreements as necessary to implement Board-approved transactions. Contrary to the claim that has been made by some parties, however, Board approval of a railroad merger does not mean that collective bargaining agreements may be swept aside wholesale even though the law provides for overrides. In fact, in recently approving the Conrail control transaction, as requested

by rail labor, the Board specifically declined to make a finding that override of collective bargaining agreements was necessary to carry out the transaction, and reaffirmed its view that any such matters should be left to negotiation and arbitration. In addition, in a recent Board decision, the so-called "Carmen III" decision, the Board limited arbitrators' authority to override collective bargaining agreements (copy of the press release describing this decision attached as Attachment 9). And no collective bargaining agreement has been overridden by affirmative vote of the Board in the three most recent Class I rail consolidations that have been approved. Nevertheless, rail labor representatives remain concerned about the override of collective bargaining agreements, and I indicated in my letter to Senators McCain and Hutchison that, if Congress shares their concern, legislative changes should be pursued.

On other employee matters related to rail mergers, the Board, in cooperation with the Federal Railroad Administration (FRA), has directed the applicants in the two most recent merger proceedings to undertake detailed planning and to produce plans demonstrating that they have done so for the safe implementation of those proposed consolidations. FRA monitors the adequacy of, and compliance with, these plans as an aid to the Board. Also at the end of last year, we took the unprecedented step of publishing jointly with FRA proposed rules governing the development of safety implementation plans and the procedures for Board consideration of such plans in future rail consolidation proceedings.

3. **Arbitration Appeals**. As I have indicated, labor implementation matters, related to Board-approved transactions, that are in dispute can be appealed to the Board. In handling these appeals, the record shows that the Board has followed its policy of leaving these matters to negotiation and arbitration as much as possible. In this regard, it is important to note that, in connection with the three major mergers recently approved, more privately negotiated agreements between labor and management have been reached at the agency's urging than ever before, very few issues have even been appealed to the Board, and in handling those few appeals the Board has not affirmatively overridden any collective bargaining agreement to the detriment of the employees involved.

In particular, in rail labor arbitration cases, the Board has deferred to the expertise of arbitrators to the extent possible, as reflected by the fact that, of the 26 arbitration cases considered by the Board since its inception, plus the 10 cases considered by the ICC under my Chairmanship, the agency reversed the arbitrator's decision only 6 times. In one of those cases, the Board granted a United Transportation Union (UTU) appeal as it pertained to health benefits; in another arbitration proceeding brought by a railroad, the Board supported the Transportation Communications International Union's position that dismissed employees do not forfeit their dismissal allowances if they refuse to accept a recall to work that would require them to relocate to a location that would require a change of residence. In other cases, the Board has stayed arbitration awards for the following reasons: to provide time for consideration of labor appeals (at the request of the American Train Dispatchers); or to provide time for the parties to negotiate further (at the request of UTU, in one case, and Brotherhood of Maintenance of Way Employes [BMWE] in another). The disputes impacted by those stays were ultimately settled by the parties. In another arbitration review case (involving BMWE and a smaller railroad), the Board issued three separate decisions favorable to labor, while declining to review other parts of the arbitration award.

Expiration of the Emergency Service Order Affecting Rail Service in the West. In my testimony last year, I reported on the rail service emergency in the western United States, and on the steps that the Board had taken to address it. To summarize briefly, after two days of oral hearings, the Board issued unprecedented emergency service orders that, among other things, made substantial changes to the way in which service was provided in and around the Houston area (determined by the Board to be the original source of the service congestion). It fully recognized the serious nature of the problems. At the same time, it recognized that government cannot run businesses better than businesses can run themselves, and thus that private-sector efforts were integral to fixing the problems. Aware of the delicacy needed in applying any governmental directive to the problem, the Board's objective was to have a positive impact without creating additional harm. Thus, the Board's actions were focused, balanced and

constructive, intended to complement ongoing private sector efforts and not to inadvertently degrade the service to some shippers while upgrading the service to others.

I am pleased to report that the Board's actions, and the actions of the private sector, have been successful overall. With respect to private efforts, one of the major private-sector initiatives undertaken involved the establishment of a joint dispatching center in Spring, TX, which improved service by consolidating the dispatching activities of the two carriers — Union Pacific Railroad (UP) and Burlington Northern and Santa Fe Railway (BNSF) — handling the bulk of the traffic in the Houston area. This initiative, combined with the expansion of a "directional running" program comparable to the establishment of a series of "one-way streets" to improve traffic flow, helped to restore the smooth flow of traffic in the Houston area. And UP has made significant infrastructure investment commitments.

With respect to governmental action, in a decision issued on July 31, 1998 (copy of press release describing the decision attached as Attachment 10), the Board found, based on the operational data that it had been regularly receiving and on the observations of Board representatives during site visits made to the Houston area on various occasions throughout the period of the emergency order, that service in the Houston area had improved significantly. Therefore, the Board found no basis on which it could lawfully extend the Houston provisions of the emergency service order. After a 45-day "wind-down" period to ensure a smooth transition, the service order expired. The voluntarily supplied performance data submitted by each major railroad that I discussed earlier will allow the Board to continue to monitor service in the West.

UP/SP Merger General Oversight. My testimony last year discussed rail mergers in general, and in particular, the Board's approval, with significant conditions, of the acquisition of the Southern Pacific (SP) rail system by the UP rail system. One of the conditions attached to the Board's approval required Board oversight for 5 years, to examine whether additional remedial conditions, beyond the many conditions imposed to mitigate potential anticompetitive impacts, would be necessary. In a decision issued on December 21, 1998, the Board, in its second annual oversight proceeding, concluded that the merger, as conditioned, had not produced competitive

harm, and thus that no additional conditions were justified at that time. In response to certain disputes between UP and the BNSF over how the two carriers interact, the Board suggested expanding the cooperative efforts reflected in the establishment of the Spring Center. In fact, the joint dispatching concept has been expanded, and UP and BNSF are now employing the approach at three additional locations.

Houston/Gulf Coast Oversight. At the time of my testimony last year, the Board had just initiated a proceeding under the auspices of UP/SP merger oversight to address proposals for permanently changing the way rail service is provided in the Houston area. The Board at the end of last year issued a decision in that proceeding.

Although the Houston/Gulf Coast Oversight proceeding was brought against the backdrop of the service emergency that crippled the railroads in the West for months, the Board found that in many respects the case represented a continuation of the original merger proceeding. In the merger, UP had paid a substantial price for SP, which had a poor infrastructure but an attractive shipper base, particularly in the Houston area. In the merger proceeding, several parties had sought to condition approval of the merger on UP's giving other railroads more access to shippers. The Board in the merger proceeding adopted several conditions to preserve competition, but it did not open up access as those parties had sought. Many of those same parties returned to the Board in the Houston/Gulf Coast Oversight proceeding, seeking relief similar to that which they had sought unsuccessfully in the merger proceeding.

The Board granted some relief ― including a requirement that the Spring Center joint dispatchers be allowed to route Houston traffic over any clear route, and a new trackage rights and interchange arrangement designed to protect the services of a local transit authority and a short-line railroad ― but it did not require UP to open up its Houston-area track to other railroads. It found that the service problems in Houston had not been caused by an abuse of market power and thus that there was no merger-related competitive harm for which additional competitive conditions needed to be adopted. The Board further found that without proof of merger-related competitive harm, the proposals for change were in essence "open access," which

the Board does not have the authority to grant. The Board noted UP's commitment to make $1.4 billion in major infrastructure improvements in the Houston area, and found no basis for concluding that infrastructure investment would be higher overall if UP were required to share its facilities with other carriers. A copy of the Board's press release describing the decision in the Houston/Gulf Coast Oversight proceeding is attached as Attachment 11.

Bottleneck Cases. In decisions served in December 1996 and April 1997, the Board established principles to govern the class of rail rate and service complaint cases known as " bottleneck" cases. Bottleneck cases arise where more than one railroad may be involved in providing service from one or more origins to a destination, but only one ─ the bottleneck carrier ─ can provide service for a particular portion of the movement.

In its decisions, the Board recognized that railroads have the initial discretion under the law as to how to rate and route their traffic, and thus shippers could not insist on a separately challengeable bottleneck rate in all instances. Nevertheless, the Board found that shippers can obtain significant relief. Notwithstanding prior precedent generally restricting rate reasonableness challenges to origin-to-destination rates, the Board found that, when the non-bottleneck segment of an established through route is covered by a rail/shipper contract over which the Board has no jurisdiction, the rate covering the bottleneck segment is challengeable separately.

Both the railroads and shippers appealed the Board's decision in court. The U.S. Court of Appeals for the Eighth Circuit recently affirmed the Board's ruling that shippers may not under existing law obtain a separately challengeable bottleneck rate in the absence of a contract for the non-bottleneck segment of the movement, citing as appropriate policy the balance in the law, as reflected in the Board's decision, between the need for railroads to earn adequate revenues and the needs of shippers to receive rail service at reasonable rates. The court declined to rule on the railroads' argument that the Board could not allow bottleneck rate relief even if a contract is obtained for the non-bottleneck segment of the movement, finding that, at the time the court case was first filed, no such concrete cases were pending. Currently, two cases separately challenging bottleneck-segment rates are pending before the Board, and the railroads' challenge to the portion

of the bottleneck decision not dealt with by the Eighth Circuit will be litigated before the U.S. Court of Appeals for the D.C. Circuit. A copy of the Board's press release describing the court's decision is attached as Attachment 12.

Conrail Acquisition Proceeding. On July 23, 1998, the Board granted, with several conditions, the application filed by CSX Corporation and CSX Transportation, Inc. and Norfolk Southern Corporation and Norfolk Southern Railway Company to acquire control of Consolidated Rail Corporation (Conrail) and to divide Conrail's assets between themselves. The transaction, as conditioned, will inject competition into the eastern United States in an unprecedented way, creating two strong competitors in the East that should provide improved rail service opportunities throughout the Northeast and South and give shippers throughout the area more options and competitive service than they have had in many decades. Beyond the application itself, which produced many tangible competitive benefits, and the additional private-sector settlements that further improved the circumstances of several shippers and localities, the Board imposed additional conditions that recognize the vital role of smaller railroads, that assist regions such as New York State, New York City, New England, and the Midwest, and that, among other things, require 5 years of oversight, along with substantial operational monitoring and reporting to ensure that the merger is successfully implemented. The Board's press release describing the Board's decision approving this transaction is attached as Attachment 13.

Other Rail Matters. Following is a brief listing of some of the more significant rail matters that I have not already discussed.

1. Mergers: the application of Canadian National Railway to merge with Illinois Central Railroad (CN/IC) is pending. An oral argument and voting conference are scheduled in March, and a written decision will be issued at the end of May.

2. Construction cases: pending are the application of the Dakota, Minnesota and Eastern Railroad to extend coal-hauling capability by that carrier into the Powder River Basin; the request of the Kansas City Southern Railway to construct a line extension to serve industrial customers in

Louisiana (currently in abeyance pending resolution of the CN/IC proceeding); and the "Tongue River III" proposal to realign a portion of a line extension authorized earlier.

3. Several abandonment and line sale cases are pending.

4. Amtrak: two important cases have been decided (one directing railroads to facilitate Amtrak's carriage of "express" traffic, one setting terms and conditions for Amtrak's use of Guilford track to enable restoration of passenger service between Boston, MA, and Portland, ME); one case is pending (seeking ruling on weight of track necessary for safe operation over the Boston/Portland corridor).

6. Rates: the Board decided the "West Texas" and "Arizona Power" cases finding the rail rates unreasonable and awarding reparations; the "McCarty Farms" case finding rates not shown to be unreasonable (West Texas and McCarty Farms were affirmed in court; judicial review was not sought of the Arizona Power case). Several rate cases have been settled by the parties. Two rate cases are expected to settle ("Pennsylvania Power" and "Shell"). Three "stand-alone cost" rate cases are pending (the "FMC" case and the "Minnesota Power" case, which are "bottleneck" cases, and the "PSI Energy" case). Two other rate/practice cases are pending.

Other Matters Within the Board's Jurisdiction. Certain transactions by modes other than rail also fall within the Board's jurisdiction. I will briefly describe the Board's jurisdiction and any significant pending cases involving other modes.

1. **Motor Freight Carriers.** Apart from the Board's jurisdiction over motor carrier undercharge matters, the Board's principal involvement with respect to trucking companies relates to rate bureaus. In this regard, the Board issued two decisions that permit the motor carrier classification bureau and the several motor carrier rate bureaus to extend their agreements for one year. However, the decisions provide that, absent legislation addressing the status of rate bureaus, or some other Congressional directive to the contrary, after December 31, 1999, the Board will approve the agreement of the motor carrier classification bureau only if the bureau's operating procedures are changed, and will approve the motor carrier rate bureau agreements only if "benchmark" rates are reduced.

Under the law, interstate motor carriers may enter into agreements under which competitors may discuss certain matters related to rate setting, and the Board is directed to continue its approval of existing "rate bureau" agreements ─ which immunizes activities conducted under them from the antitrust laws ─ unless it finds the agreements contrary to the public interest. By statute, all existing rate bureau agreements were to expire on December 31, 1998, unless their renewal was approved by the Board.

As noted, after receiving public comment in the aforementioned cases, the Board found that both classification immunity and ratesetting immunity could be continued, but only if certain changes were made. In particular, it found that the classification bureau's agreement would need to be modified to provide for a more open process. It also found that the ratesetting bureaus could retain their immunity, but only if existing "class rates" ─ rates that are comparable to "list" or "sticker" prices on automobiles ─ are reduced to levels closer to "going rates."

Rather than immediately ordering rate reductions or modification of the classification bureau's procedures, however, the Board provided for a one-year extension of the approval of the existing agreements, reflecting a letter dated November 17, 1998, in which the Republican and Democratic leadership of the Committee on Transportation and Infrastructure of the U.S. House of Representatives indicated that the rate bureau issue would likely be addressed legislatively during the year, and asked the Board to defer issuing a final ruling in these cases pending completion of the legislative process. In the meantime, trucking interests have sought administrative reconsideration of the Board's decisions that would require certain changes before immunity would be continued; the shipper interests strongly oppose the requests for reconsideration. The Board's press release describing the Board's decisions is attached as Attachment 14.

2. **Intercity Bus Industry**. Intercity bus carriers require Board approval for mergers and similar consolidations, and for pooling arrangements between carriers. In addition, the Board can require bus carriers to provide through routes with other carriers. Recently, the Board has seen a rise in the number of consolidations within the bus industry.

3. **Household Goods Carriers.** The ICCTA eliminated the requirement that household goods carriers file tariffs, but continued to require that their tariffs be published and made available to homeowners whose shipments are subject to the tariffs. In February 1997, the Board adopted regulations governing household goods carriers' tariffs. The regulations require, in general, that household goods shippers be clearly informed of the services they will receive and the charges they will pay. I should also note that the Household Goods Carriers' Bureau Committee has asked that its antitrust immunity be extended.

4. **Noncontiguous Domestic Trade.** Before the ICCTA, the ICC regulated inland water carriage, while regulation of the noncontiguous domestic trade (service between mainland points and points in Alaska, Hawaii, or the U.S. territories and possessions such as Puerto Rico or Guam) was bifurcated: the ICC regulated joint water-motor or water-rail rates, while the Federal Maritime Commission regulated "port to port" transportation (transportation for which the inland and water carriers did not set their rates cooperatively). The ICCTA transferred all jurisdiction over noncontiguous domestic trade to the Board, requiring carriers to file tariffs, and giving the Board jurisdiction over the reasonableness of rates for service in the noncontiguous domestic trade. It established a zone of reasonableness (ZOR) for noncontiguous domestic trade rates. The Board recently received a formal rate complaint involving the water carriers serving Guam.

5. **Pipeline Rate Regulation.** The Board regulates the rates charged for interstate pipeline transportation of commodities other than water, gas, and oil. In October 1996, in a decision responding to a complaint filed against Chevron Pipe Line Company, the Board found that, at certain volume levels, the tariff rates filed by Chevron for the transportation of phosphate slurry from Vernal, Utah, to Rock Springs, Wyoming, were unreasonably high and had to be reduced. In response to a complaint filed against Koch Pipeline Company, the Board in May 1997 instituted an ongoing investigation into rates charged for pipeline movements of anhydrous ammonia from production facilities in southern Louisiana to several Midwestern States. A decision is expected in that case in the near future.

Conclusion

Since its inception, I believe that the Board, pursuant to Congressional directive in eliminating the ICC, has been a model of doing more with less ─ of putting its limited resources to the most efficient use in handling its caseload expeditiously and resolving matters before it in an effective and responsible manner in accordance with the ICCTA. I also believe that the Board has approached its work with fairness, balancing the many varied and often conflicting interests under the statute in reaching its decisions on the record. While not everyone agrees with all of the decisions rendered by the Board since its creation, I believe nevertheless that the Board has compiled an impressive record of tackling complex issues and moving matters before it to resolution.

At the reauthorization hearings last year, some Members of this Committee expressed the view that the Board has not done enough to address the concerns of shippers. I can only respond by saying that, during the past year, the Board has, in a fair and professional manner, addressed each of the issues raised last year to the fullest extent appropriate. I look forward to continuing to work with the Committee on the important issues that remain.